Editor's note: appealed to D.D.C., Civ.No. 81-0749; consolidated with appeal of Estate of Glen Coy, 52 IBLA 182 (1981); dismissed, Oct. 9, 1981 (court states that the dismissal was due to Lowey, 517 F.Supp. 137 (D.D.C. 1981)); appealed to D.C. Cir., No. 81-2286 reversed and remanded to Distric Court on Nov. 22, 1982 (due to Lowey 684 F.2d 957 (D.C. Cir. 1982); remanded to Secy. by court order, Jan. 5, 1983.

D. R. WEEDON, JR., ET AL.

IBLA 80-75 etc. Decided December 31, 1980

Consolidated appeals from decisions of the Wyoming State Office, Bureau of Land Management, canceling one oil and gas lease (W 59358) and rejecting simultaneous noncompetitive offers for four parcels (W 60393, W 62364, W 63033, and W 63142).

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

Where an oil and gas leasing service has an interest in the offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

4. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a State Office of BLM of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

5. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Sole Party in Interest -- Oil and Gas Leases: Cancellation

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence all parties holding interests in the offer.

6. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

7. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Assignments or Transfers

BLM properly refuses to recognize the asserted interest of a party in a lease offer where no application for BLM's approval of a transfer of any interest in this offer and lease (if issued) has ever been filed, and BLM properly determines to issue the lease, if appropriate, to the offeror and not to the asserted interest holder.

8. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Assignments or Transfers -- Regulations: Generally

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval

> of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

APPEARANCES: Thomas W. Ehrmann, Esq., et al., Milwaukee, Wisconsin, for D. R. Weedon, Jr., Janice K. Hegy, Robert D. Havens, Daniel J. O'Brien, Marion A. Foreman, and Resource Service Company, Inc.; Richard R. Ertel, Esq., pro se, and for Thomas M. Ertel; Melvin E. Leslie, Esq., Salt Lake City, Utah, for Geosearch, Inc.; Harold Baer, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management; and Craig R. Carver, Esq., Denver, Colorado, for John K. Cooper.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

D. R. Weedon, Jr., et al. (appellants) 1/ have appealed from several decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous noncompetitive oil and gas lease offer cards of clients of Fred Engle, d.b.a. Resource Service Company, Inc. (RSC), cancelling a lease issued to one of Engle's clients, and declaring that Geosearch, Inc. (Geosearch), has no cognizable interest in an offer drawn with second priority. The pertinent facts and issues presented by these appeals are identical, so we have consolidated our consideration of them.

In each case, BLM found that the service contract between Engle and his client gave Engle an enforceable legal interest in the proceeds of any lease won by his client, that Engle had this interest at the time the offer was filed, and that the failure to file a statement with the offer to disclose this interest required the rejection of the offer or the cancellation of a lease issued pursuant to the offer under 43 CFR 3102.7. BLM concluded that the service agreement gave Engle this interest notwithstanding his attempt to negate it by filing a unilateral amendment and disclaimer with BLM.

We have considered the question of the validity of offers filed by RSC clients in these circumstances several times in the past and have held consistently that they must be rejected. Donald W. Coyer, (on Judicial Remand), 50 IBLA 306 (1980); Frederick W. Lowey, 40 IBLA 381 (1979); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, 32 IBLA 148 (1978); Lola I. Doe, 31 IBLA 394 (1977). 2/ We have also

1/ See appendix for a full list of appellants and the serial numbers of the parcels involved in their respective appeals.

2/ These appeals mark the fourth opportunity Engle has had to litigate the identical issues before this Board. See Donald W. Coyer (on Judicial Remand), supra at n.6. However, we need not consider whether he is estopped from doing so here, as several additional issues are presented.

affirmed BLM's rejection of offers in which other leasing services held similar undisclosed interests at the time their clients' offers were filed. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). We adhere to these holdings.

[1, 2, 3] The service agreement in effect in all of these cases at the time Engle filed the offers for his clients gave Engle an "interest" in these offers. 3/ This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to his clients or receive any consideration from them to bind the contract. 4/

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreements between Engle and Havens (IBLA 80-799), O'Brien (IBLA 80-840), or Ertel (IBLA 80-841). These agreements were entered into on November 4, December 12, and March 16, 1977, respectively, well after January 13, 1977, the date of the amendment and disclaimer, which clearly applies only to agreements extant on January 13. Thus, the purported disclaimer, even if legally effective, would not apply to these offers. Frederick W. Lowey, supra at 385-86.

Engle's clients failed to disclose this interest at the time their offers were made as required by 43 CFR 3102.7, and their offers must therefore be rejected because they violate this regulation. 5/ Moreover, numerous other offers in which Engle had a similar interest were apparently filed for these parcels. For instance, Engle's clients' offers were drawn with both first and second priorities in W-63142 (IBLA 80-840) and W-63033 (IBLA 80-841). Thus, Engle had increased chances of success in these drawings in violation of 43 CFR 3112.5-2, under which all such offers must be rejected. 6/

[4] The question of whether the Department is estopped from rejecting Engle's client's offers was fully considered in Donald W. Coyer (On Judicial Remand), supra at 313-14. We adopt our holding

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3/ Donald W. Coyer (On Judicial Remand), supra at 312; Frederick W. Lowey, supra at 383; Alfred L. Easterday, supra at 198; Sidney H. Schreter, supra; Lola I. Doe, supra.
4/ Donald W. Coyer (On Judicial Remand), supra at 313; Frederick W. Lowey, supra at 384-92; Alfred L. Easterday, supra at 199.
5/ Donald W. Coyer (On Judicial Remand), supra; Gertrude Galauner, supra; Marty E. Sixt, supra; Alfred L. Easterday, supra; Sidney H. Schreter, supra; Lola I. Doe, supra; B. F. Sandoval, supra.
6/ McKay v. Wahlenmaier, 226 F.2d 35, 41-43 (D.C. Cir. 1955); Mae R. Colvin, 42 IBLA 266 (1979); Marty E. Sixt, supra; William R. Boehm, 36 IBLA 346 (1978); William R. Boehm, 34 IBLA 216 (1978); Graybill Terminals Co., 33 IBLA 243 (1978); Panra Corp., 27 IBLA 220 (1976).

there that the Department is not estopped to reject these offers in toto, and incorporate it by reference herein.

Engle and his clients, through common counsel, argue that it is unfair to give retrospective effect to our determination that the purported amendment and disclaimer was ineffective because so doing unjustifiably deprives them, as "innocent offerors," of valuable lease rights. First, we note that Engle, who promoted the procedure in question and insisted on carrying it through despite BLM's explicit warnings against it, would share in these valuable lease rights, and so can hardly be described as an "innocent offeror." Nor is it unfair to reject Engle's clients' offers on account of their selected agent's failure to comply with filing requirements. To the contrary, it would be unjustifiable to those citizens willing to comply with these regulations if we were to ignore their violations and subsequent refusal to correct them. Moreover, Engle's clients cannot be regarded as "innocent" in this matter. Each of them had knowingly and willingly executed a contract with Engle which gave Engle an obvious interest in each lease which might issue pursuant an offer filed by Engle in the name of the client. Each client then signed or authorized Engle to sign the client's name to a certificate attesting to the client's assertion that the client was the sole party in interest in the offer and any resultant lease. Thus, each client, having personally created an interest in Engle, had actual knowledge that the representation so certified was false. Engle's "waiver" or "disclaimer," regardless of its efficacy, had no effect on the client's state of mind at the time the offer was certified and filed, as they were all unaware of it.

In Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980), the Court held that the decision of this Board in the case of D. E. Pack (On Reconsideration), 38 IBLA 23 (1978), should not be applied retrospectively, but should have only prospective effect. Appellants argue that our holding in the instant case likewise should be prospective only, citing the "many parallels" between this case and Runnells. Despite whatever parallelism may be apparent to appellants, we perceive a number of significant -- and controlling -- distinctions. In Runnells the Court noted that the Board's holding in D. E. Pack "did depart from a 'well established practice' of the BLM" which had prevailed "from 1971 until after August 1976." By contrast, from the first time BLM's attention was drawn to Engle's contractual relationship with his clients the Bureau had adopted the position that it invested him with an undisclosed interest in his clients offers in violation of 43 CFR 3102.7. See Lola I. Doe, supra.

Further, in the Runnells case, the Court found that the regulation which was interpreted by this Board in D. E. Pack "was subject to two 'reasonable' interpretations," and characterized that regulation as ambiguous. The same could hardly be said of 43 CFR 3100.0-5(b) which defines what constitutes an "interest" in an oil and gas lease, as follows:

> An "interest" in the lease includes, but is not limited to, record title interest, overriding royalty interests,

> working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

No one who held or granted the exclusive right to participate in a precise share of any proceeds from the sale or assignment of the lease and from any proceeds derived from retained overriding royalties could possibly entertain any serious doubt that such a right constituted an "interest" within the context of this regulation.

Nor is there anything even remotely ambiguous about 43 CFR 3102.7 which provides:

> A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is cancelled. [Emphasis supplied.]

The requirement is plainly worded and the consequences of failure to comply are clearly expressed in mandatory terms. To hold that, upon a finding of violation, the Department must forego remedial action until a similar violation is discovered in the future would be to hold that a person may violate the regulation with impunity until discovered, but not thereafter.

[5] D. R. Weedon argues that the Department may not cancel his lease (W-59358, IBLA 80-75) administratively. The regulation, supra, mandates cancellation in such circumstances. It is established that the Department has authority to cancel a noncompetitive oil and gas lease in an administrative proceeding where the lease was granted in

violation of the Mineral Leasing Act and the regulations promulgated thereunder governing applications to lease. Boesche v. Udall, 373 U.S. 472 (1963). We have frequently approved the use of this authority to cancel a noncompetitive lease where it is determined following issuance that the underlying offer was defective. Robert A. Chenoweth, 38 IBLA 285 (1978) (insufficient filing fee); Norman Monath, 32 IBLA 392 (1977) (failure to pay advance annual rental); Gerald L. Christensen, 30 IBLA 303 (1977) (use of incorrect parcel number on the drawing entry card); and W. H. Bird, 72 I.D. 287 (1965) (offer card filed pursuant to improper scheme giving increased chance of success in the drawing). See also R. S. Prows, 66 I.D. 19 (1959); Transco Gas and Oil Corp., 61 I.D. 85 (1952). In McKay v. Wahlenmaier, 226 F.2d 35 (C.A.D.C. 1955), the Court held that the Secretary must cancel an oil and gas lease issued in violation of a regulation of the Department.

The drawing entry card (DEC) of Thomas M. and Richard R. Ertel (the Ertels) was drawn with second priority in the February 1978 drawing for parcel WY 62 (IBLA 80-841, W 63033). BLM rejected this offer because Richard Ertel's service agreement with Engle gave him an interest in the offer which the Ertels improperly failed to disclose when they filed their offer. 7/ The Ertels have filed a separate appeal of BLM's decision rejecting their offer following Engle's counsels' determination on August 1, 1980, that they could not represent both clients. The Ertels argue that the terms of Richard Ertel's agreement with Engle were materially different from those of his other clients, as a result of changes made in the standard form of this agreement. They note that BLM failed to request a copy of this agreement from them or otherwise involve them in the administrative proceeding. However, they have provided us with a copy of this agreement, so that we may resolve the matter without remanding it.

This agreement creates the same objectionable interest in Engle as did the other agreements. The agreement is dated March 16, 1977, and is for the so-called "single drawing plan," under which the client agrees to submit $20 for each month in which he wishes to participate in a BLM drawing, and Engle agrees to file an offer for him and, if the offer is selected, to advance annual rental and negotiate a sale of the lease, in return for specific share of the proceeds for any sale of that lease for 5 years (whether arranged by Engle or not). The only additional language written into this agreement is the proviso that Richard Ertel "reserves the right to participate in future drawings for oil and gas leases without the obligations of this agreement." The obvious intention of this insertion was to establish clearly that Richard Ertel was reserving the right to participate independently in

7/ The record contains only a copy of the service agreement between Engle and Richard R. Ertel. It appears that Thomas M. Ertel was also Engle's client, although even if he were not, the result would be the same, as Engle would have had an enforceable right to share in Richard Ertel's interest in the offer.

future drawings without incurring the obligations to Engle which would accrue under the contract in those instances where Engle performed the filing service.

However, it is apparent that the Ertels did use Engle's services in the February 1978 drawings and did not participate on their own. The drawing entry card shows their address as the same as RSC's, in the familiar preprinted type which marks all of Engle's clients' offer cards. The service agreement provides that if Ertel did participate in any future drawing through Engle's services, all parts of this agreement would be binding on him and RSC. Thus, as Richard Ertel did use Engle's services, the terms of the agreement applied, and Engle had an interest in the offer. 8/

[6] The Ertels also argue that Engle did not have an interest in their offer because the interest was contingent on their agreeing to sell the lease and because they never intended to assign or transfer the lease. This argument is not persuasive. Although Engle's entitlement to share in the proceeds of the lease was contingent upon the Ertels selling it (or some part of it), it was nevertheless an interest, as an "interest" includes any claim to a share in profits which may be derived from the lease. 43 CFR 3100.0-5(b); Marty E. Sixt, 36 IBLA 374, 376 (1978). Clearly, at the time the offer was filed, Engle had a legal claim to share in any potential profits which might be derived from sale of the lease for 5 years.

We need not look beyond the agreement to the Ertels' alleged intent not to sell the lease. The very existence of an agreement giving Engle an enforceable share in the proceeds of the sale of the lease was an "interest" which was required to be disclosed when the offer was made on pain of rejection of the offer. Ibid.

Nor is it relevant that the Ertels may have altered their agreement with Engle in April 1978. The facts that this agreement existed at the time the Ertels filed this offer in February 1978, that the agreement gave Engle an enforceable right to share in the proceeds from any sale of the lease for 5 years, and that the existence of this interest was not disclosed at the time of filing are sufficient to establish the 43 CFR 3102.7 has been violated. Moreover, it is clear that 43 CFR 3112.5-2 has also been violated, as the first-drawn card was filed by another of Engle's clients, Marion A. Foreman. Thus, Engle effectively had more than one chance to acquire an interest in the lease involved in this drawing, and all of his clients' offers for this parcel were properly rejected for that reason. Marty E. Sixt, supra at 377. 9/

[7] Finally, Geosearch has appealed BLM's decision concerning parcel WY 66 in the December 1977 drawing (W 62364, IBLA 80-794) insofar as it declares that Geosearch has no cognizable interest in the

8/ See n.7, supra.
9/ Also cases cited at n.6, supra.

offer for this parcel which was drawn with second priority and which was filed by Randy R. and Hugh H. Lines (the Lines). BLM held that it does not recognize such an interest because Geosearch never submitted any assignment of this proposed leasing interest to BLM for approval. BLM declared in this decision that it could not consider granting the lease to anyone other than the Lines, who are the only offerors of record.

BLM properly held that Geosearch presently has no cognizable interest in the second-drawn offer. 10/ Geosearch has never filed a proper application for approval of a transfer of any interest in the offer and lease (if issued) as described in 43 CFR 3106.3-4. While the protest, filed on October 3, 1978, does contain a copy of a private agreement between it and the offerors, it is not on a proper form, does not contain the required fee or transferee's statement, and does not request approval of such a transfer. 43 CFR 3106.2, 3106.3-4. In any event, BLM could not have approved such a request in October 1978 as Geosearch had not established its qualifications to hold a lease (43 CFR 3106.1-2) or filed the required interest statement (43 CFR 3106.1-4). See Newton Oil Co., A-30453 (Nov. 30, 1965).

Nothing in the record shows that Geosearch has subsequently submitted a proper application for approval of such an assignment. An assignment of whatever interest an oil and gas lease offeror may hold is ineffective until it is approved by BLM. See William G. Beanland, 21 IBLA 66 (1975); Amoco Production Co., 16 IBLA 215 (1974). Thus, in the absence of an approved application, BLM properly decided that no effective assignment had been accomplished and properly concluded not to issue this lease to anyone other than the Lines, if their offer is valid.

[8] The regulations governing transfers have been recently amended and now provide that no offer may be transferred or assigned prior to issuance of the lease. 43 CFR 3112.4-3 (1980). 11/ As

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10/ We do recognize that Geosearch has shown an adequate interest to grant it standing to participate in administrative review in these appeals based on its demonstrated agreements with the Lines and other offerors which may subsequently be recognized as valid assignments of part of their interests to Geosearch.

11/ This regulation provides as follows:

"No application, offer, lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4-2 of this title. No agreement or option to transfer or assign such application, offer, lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in disapproval of the subsequent assignment."

Geosearch has failed to seek approval of this transfer prior to June 16, 1980, the effective date of this change, it now falls under these provisions. Thus, BLM cannot consider an application for approval of a transfer until after the lease issues. Accordingly, BLM should consider the merits of the Lines' offer and, if appropriate, issue the lease to them, and not in any part to Geosearch. If the lease is issued to the Lines, BLM may then consider any application for approval of an assignment of an interest therein. 12/

There are no disputed issues of fact presented in any of these appeals. Accordingly, it is unnecessary to convene a hearing here, and the parties' various requests to do so are denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

12/ As the issue is not presented for resolution, we do not comment on whether BLM may properly exercise its discretion not to approve this assignment if it is submitted for approval after issuance of the lease because it was not submitted for approval within 90 days of execution of the assignment by the parties. 43 CFR 3106.3-1.

APPENDIX

IBLA NO.	APPELLANT(S)	RESPONDENT(S)
80-75	D. R. Weedon, Jr.	Geosearch BLM
80-97	Janice K. Hegy	BLM
80-794	Robert D. Havens RSC ** Geosearch *	Geosearch * BLM
80-840	Daniel J. O'Brien RSC **	Geosearch BLM
80-841	Marion A. Foreman RSC ** Thomas M. and Richard R. Ertel	Geosearch *** BLM John K. Cooper ***

IBLA NO.	DATE OF BLM DEC.	PARCEL NO./ DRAWING DATE	BLM SERIAL NO.
80-75	10-15-79	WY 170 May 1977 Lease issued effective 12-1-77	W 59358
80-97	10-29-79	WY 31 July 1977	W 60393
80-794	6-20-80	WY 66 December 1977	W 62364
80-840	7-15-80	WY 171 February 1978	W 63142
80-841	7-15-80	WY 62 February 1978	W 63033

* In 80-794 Geosearch appeals BLM's decision not to recognize its asserted interest in the second-drawn offer for this parcel, and answers appellants' challenge of BLM's decision rejecting the first-drawn offer. As to Geosearch's standing to answer see n.10.

** In 80-794, 840, and 841, RSC has not shown or alleged that it has an adequate interest to give it standing to appear. However, its standing has not been challenged, and we do not doubt that RSC has some potential interest in these offers, adequate to give it standing, even though no formal assignments have ever been approved. See n.10.

*** John K. Cooper and Geosearch both participate here on the basis of asserted interests in the third-drawn offer. The record shows that Cooper apparently agreed to assign Geosearch part of his interest in this offer but later rescinded this agreement. We do not comment on this situation other than to note that Geosearch has an adequate interest from the agreement to give it standing here.